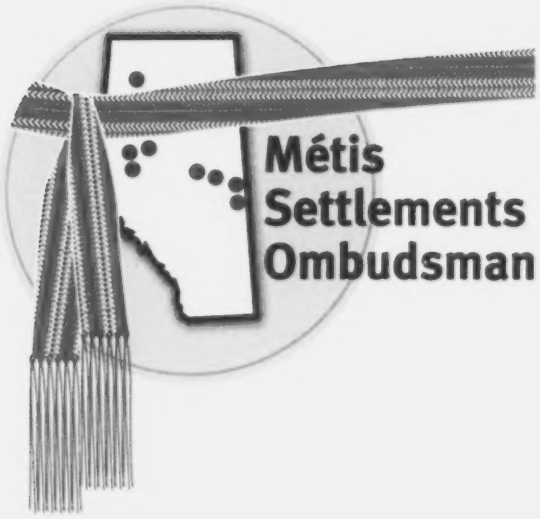
Métis
Settlements
Ombudsman

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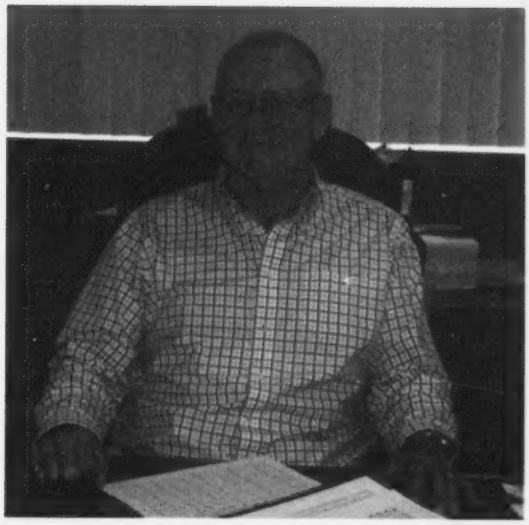
Message from John Brosseau, Alberta Métis Settlements Ombudsman

Is it fair?



"That's not fair". How often have we heard this in our lives and especially from the mouths of our children? Children seem to have a sense of justice: everyone takes their turn and shares equally in opportunities. Unfortunately, as we get older many of us become sidetracked with the pressures of day-to-day living and demands from one source or another, and we lose sight of this basic concept of fairness. Thus, an Ombudsman is to help settle issues and hopefully bring a sense of fairness back.

Why Do You Need An Ombudsman?

The main role of the Métis Settlements Ombudsman (MSO) is to promote the rights and responsibilities of councillors, administrative staff and settlement members through reviews, investigations and inspections. The MSO also has the authority to ask probing questions on behalf of the members of the eight Alberta Métis Settlements.

Even though many Settlement Councils would prefer to have a settlement member as the Métis Settlements Ombudsman, I am not a settlement member; however, I am Métis. I would like to thank all those councils who have accepted and welcomed me to their settlements, their meetings and for their cooperation.

My Work as Ombudsman

In my first year as your Ombudsman, I have visited six of the eight Métis Settlements at least once, and through events and invitations I've visited some settlements more often. I would like to continue to meet and talk with settlement council members so that greater understanding of good governance and fairness will grow.

As well, this past year we have published four bulletins (which are located in Appendix E) with information on how to deal with issues about which we receive many complaints: conflict of interest, housing, councillors as contractors, and the difference between governance and management.

I trust these bulletins have assisted settlement residents and councils to gain a clear understanding of how to deal with the above issues and perhaps reduce the number of complaints to the Ombudsman's Office.

This past year presentations have been made on four settlements during their Justice Forum days and a presentation to the Métis Settlements General Council on the *Role of the Ombudsman.*

The Process of Investigation

Like most things in life, there are always some irritants. One that has frequently been brought to the attention of this Office by Métis settlement councillors is that of the Ombudsman conducting an investigation under his own initiative. Councillors have expressed the opinion that it is unfair when a complainant's identity is unknown. I have empathy for their position; however, there is another side to this matter. It is risky to make a complaint about your employer, or those who govern you, as they have the ability to punish and retaliate against you for reporting them. Consequently it is necessary to conduct some investigations under the Ombudsman's Own Initiative to protect the complainant from possible retribution.

When the Métis Settlements Ombudsman's Office does an investigation, it is seeking information generally from Métis Settlement Councils to either support or deny the allegations that have been made against them. For a proper investigation to be done it is essential that the necessary information be provided. When it isn't provided, because the council says it's too much work or the records aren't available, the MSO must use the power of the Public Inquiry Act to access these records. There have been legal challenges to stop the MSO from securing the requested information, which causes delays and significant legal expenses to both the settlements and the Métis Settlements Ombudsman's office. As well, dragging on the investigation for an excessive amount of time often means "justice delayed is justice denied".

In some cases, the review/investigation findings have shown that there have been errors in the activities of councils, staff, and settlement entities. In others, no mistakes or errors have been found. The strength of an Ombudsman system is that it acts as an independent reviewer of issues. It recommends corrective action(s) when justified and supports the activities of public officials when the evidence shows that they have acted correctly or there is a lack of evidence to support a complaint.

The Annual Report

In the statistical portion of this Annual Report you will see that the issues that have been brought to the Ombudsman's attention are numerous and varied. However, the majority of them concern housing allocations, management of settlement money, and conflict of interest.

Thank you to the Minister of Aboriginal Relations and staff, the Métis Settlements General Council, the Métis Settlements Appeal Tribunal, and the Métis Settlements Councils for your support and cooperation.

To Settlement members and their elected councils: The MSO Office will continue to assist you in the development of good, fair and just governance. We will do our part to make sure the governance structure you have in place operates in a fair and equitable manner.

Introduction to Staff

The Office of the Métis Settlements Ombudsman (MSO) has been operating since April of 2003. Our goal is to provide exceptional service to the members, Councils and staff of the eight Alberta Métis Settlements.

Staff members as of March 31, 2010:

Left to right: **Dr. John F. Brosseau,** *Métis Settlements Ombudsman*
Danielle Cardinal, *Advisor*
Chuck Moberly-McBurney, *Senior Advisor*
Kalina Garritty, *Office Administrator*
Keith Pink, *Advisor*

Staff Training, Conferences and Presentations

Staff took part in the following meetings and presentations in 2009/2010:

Training and Conferences:

- Freedom of Information and Protection of Privacy Training
- Sharpening Your Teeth – Training hosted by the Ontario Ombudsman
- The Friends of Jasper National Park – Aboriginal Workshop

Presentations:

- Hosted a Settlement Grade 5 Class – Gift Lake School
- Métis Settlements General Council (MSGC) Small Entity Workshop
- Presentation to the Edmonton Chapter of Certified Fraud Investigators
- Buffalo Lake Justice Forum
- Elizabeth Justice Forum
- Kikino Justice Forum

Participation in Various Meetings and Social Functions:

- Fishing Lake Justice Forum
- Kanata Edmonton Public Meeting
- BLMS Public Meeting
- Peavine Budget Meeting
- Aboriginal Relations Open House
- Métis Settlements Appeal Tribunal Open House
- Métis Settlements General Council Christmas Dinner

Overview

Background

The Office of the Métis Settlements Ombudsman (MSO) was created in 2003 to provide an independent and impartial place to take complaints about Settlements' management or leadership. It also exists to identify unfair or unjust complaints made against the Councils and staff.

An ombudsman function was recommended by a 1999 Métis Settlements Appeal Tribunal Task Force report. This was later supported by a feasibility study. The majority of Métis Settlement members and elders attending community consultation meetings supported this recommendation.

Alberta's Minister responsible for Aboriginal Relations appoints the MSO based on a recommendation of a Selection Committee as outlined in Section 4 of the *Métis Settlements Ombudsman Regulation* (Alberta Regulation 116/2007). The Minister delegates the MSO to receive complaints and to appoint inspectors and investigators as needed. The individuals appointed by the MSO have the authority to conduct independent inspections or investigations, with the powers of a Commissioner, under the Alberta *Public Inquiries Act*.

Mission Statement

The mission of the Métis Settlements Ombudsman (MSO) is to promote the rights and responsibilities of Métis Settlement Councils, staff, entities, and members, through inspections, investigations, and recommendations.

Guiding Principles

The mission will be accomplished utilizing the principles of *administrative fairness* and *conflict of interest* guidelines, promoting ethical leadership. (In order to better understand the principles of **Administrative Fairness** and **Conflict of Interest**, checklists have been developed – please refer to Appendix C and Appendix D.)

Objectives

By authority of a Ministerial Delegation, the MSO:

- ✓ will **assist** Settlement members and Councils to understand the concepts of *administrative fairness* and *conflict of interest.*
- ✓ will **promote** appropriate standards for the delivery of Settlement services.
- ✓ will **accept** complaints from Settlement members who feel that an administrative error or injustice has occurred in their dealings with a Métis Settlement Council, staff, or a Settlement entity.
- ✓ will **accept** complaints from Settlement members who feel that a Métis Settlement Council, an individual Councillor, staff member, or an employee of a Settlement entity has been involved in a *conflict of interest.*
- ✓ will **identify** frivolous, vexatious, or unjust complaints against members of a Métis Settlement Council, staff, or an employee of a Settlement entity.
- ✓ may **conduct** an investigation/inspection where a review of the complaint identifies sufficient evidence to indicate an administrative error or injustice may have occurred in which a Council, Councillor, staff member or an employee of a Settlement entity has acted in a real or perceived *conflict of interest.*
- ✓ may **inspect/investigate** *administrative fairness* or *conflict of interest* issues under the auspices of an Ombudsman's Own Initiative.
- ✓ will **communicate** the results of an inspection/investigation in any fashion the MSO deems to be appropriate, including recommendations to resolve a specific complaint or to improve a service delivery system.
- ✓ will **advocate** for all recommendation(s) made and will **track** implementation steps.

The MSO:

- ✓ cannot accept complaints about issues which occurred before March 31, 2002.
- ✓ may insist that all appeals available to a complainant be completed before the MSO can become involved.
- ✓ is guided by the provisions of Section 171-175 of the *Métis Settlements Act* and the Métis Settlements Ombudsman Regulation (Alberta Regulation 116/2007).

Revised: February 2008

Complaint Process

Investigation and Resolution

It is the mandate of the Office of the MSO to hear complaints and concerns and to deal with them in the most appropriate way. When a complaint is received, the MSO will determine if there is enough evidence to implement a *review*. If a *review* discovers that an error or irregularity occurred, the MSO works informally with those involved to try to resolve the concern and to prevent the same error from happening again.

Concerns that cannot be resolved through the *review* process, discussion or mediation are then approved for investigation. The results of investigations may be made public.

Making a Complaint

Anyone may make a complaint to the MSO. However, an individual who has a complaint must first try to resolve the matter him/herself. This includes going through any formal appeal processes that might exist with Métis Settlements. Anyone who remains dissatisfied after appeals are heard is welcome to bring a complaint to the MSO.

There is no fee for filing a complaint.

Complaint Criteria

To be considered, a complaint:

- must be about an issue which occurred on or after March 31, 2002. Occasionally, an issue that occurred prior to March 31, 2002, may be reviewed if action (e.g. a decision) on a complaint was taken after March 31, 2002.
- should be in writing. MSO Complaint Forms must be completed, including the name, address, telephone number and signature of the person making the complaint.
- must relate to the activities or business of an Alberta Métis Settlement, Settlement Council, individual Settlement Councillor, or staff.
- must involve alleged mismanagement, an unfair practice or a conflict of interest.
- must be based on facts or evidence.

Four basic steps have been developed for the MSO process of looking at a complaint:

Further Inquiries: When a complaint has been received, but there is not enough information to proceed, MSO staff contact the person who submitted the complaint to clarify the issue(s) or to make sure the matter is within the jurisdiction of the MSO.

Review: Once the MSO is satisfied the issue is within the jurisdiction of the MSO and the complaint appears to have merit, a *review* is authorized. The advisor/investigator may then contact the Council, staff or Settlement entity to seek help in determining if there is evidence to suggest an error or inappropriate activity occurred. The advisor/investigator then submits recommendations to the MSO based on the findings. That recommendation might be: to close the file, as there is a lack of evidence to support the complaint; to enter into a formal inspection or investigation; or to suggest any other action the advisor/investigator may feel is appropriate. Mediation techniques might also be used during this stage to resolve the complaint.

Investigation/Inspection: If there is enough evidence to suggest an error occurred, or a Council, staff member or Settlement entity has acted inappropriately, and it cannot be resolved through mediation, a formal investigation or inspection is authorized under the *Métis Settlements Act* (MSA). Once appointed under the MSA, an investigator has the same power and authority as a Commissioner under the *Public Inquiries Act.* Normally, the person who completed the *review* of the initial complaint would not be appointed as an investigator.

Formal Report: If the investigation supports the findings of the *review*, mediation would be attempted once again and a *formal report* would be submitted to the MSO with appropriate recommendations. Any person who might be negatively affected by a *formal report* is given the opportunity to present evidence or argument to the MSO as to why a recommendation(s) should not be accepted.

In cases where MSO recommendations are ignored, or there is a refusal to take action, the MSO may refer the matter to the Minister of Aboriginal Relations who can invoke Section 176 of the *Métis Settlement Act:*

"Improper management

176(1) If the Minister considers that the affairs of a settlement are managed in an irregular, improper or improvident manner, the Minister may, by order,

(a) dismiss the settlement council or particular councillors or an employee or official of the settlement, or

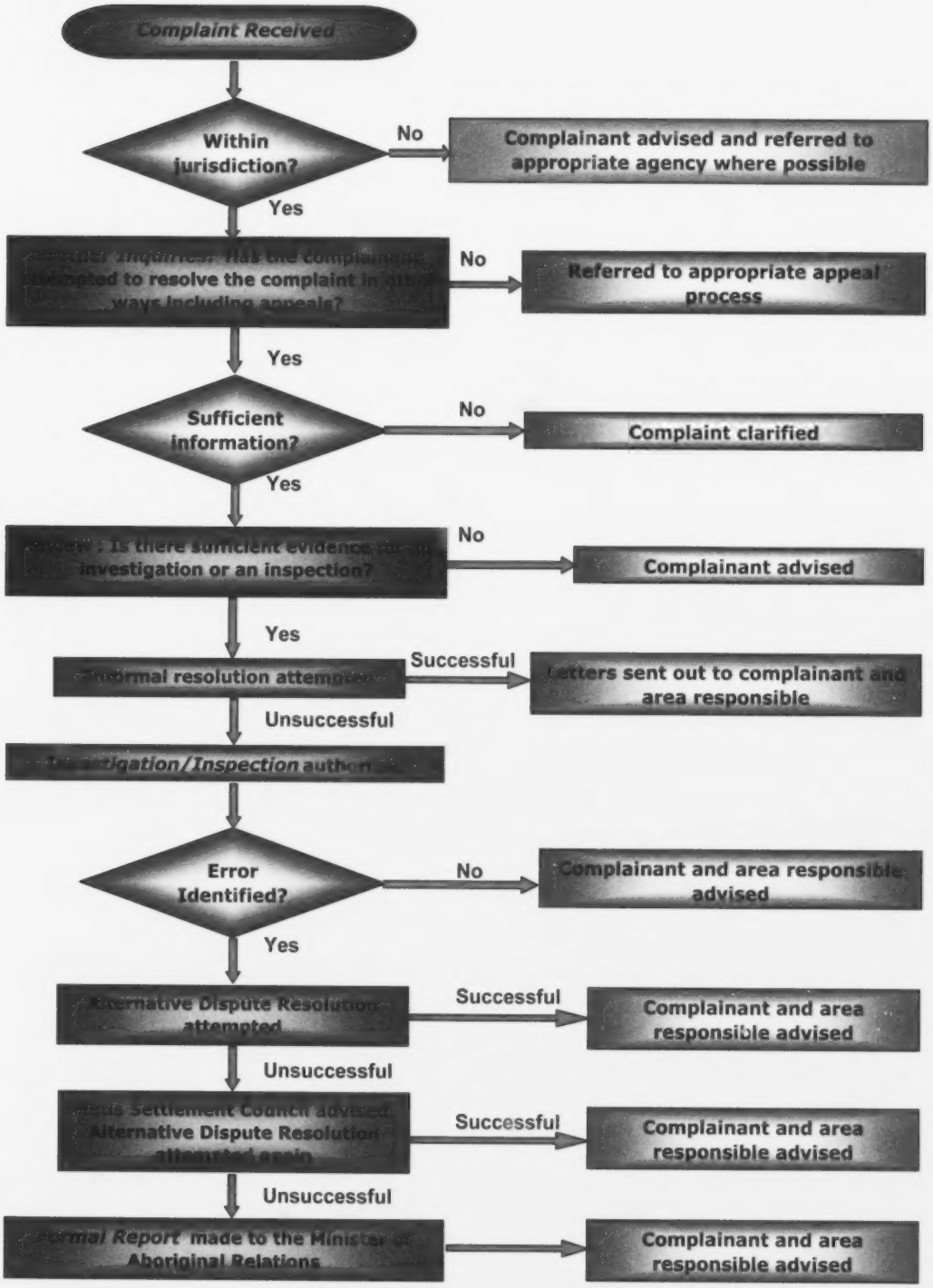
(b) direct the settlement council or an employee or official of the settlement to take any action that the Minister considers proper in the circumstances.

(2) If a direction under subsection (1)(b) is not carried out, the Minister may, by order, dismiss the settlement council or a particular councillor, or an employee or official of the settlement.

(3) An order of the Minister under subsection (1)(a) or (2) must be published in The Alberta Gazette."

1990 cM-14.3 s176

Complaint Process Flowchart



Statistical Information

The Office of the MSO keeps internal, confidential records on the complaints it receives. Statistics are kept to help identify trends and/or areas of concern and to provide direction and focus for the Office. The following chart shows the number of complaints received according to Settlement:

Settlement:	Number of Complaints (Member) 2008/2009	Ombudsman's Own Initiative 2008/2009	Number of Complaints (Member) 2009/2010	Ombudsman's Own Initiative 2009/2010
Buffalo Lake	30	3	35	4
East Prairie	14	0	24	0
Elizabeth	20	5	29	16
Fishing Lake	21	3	38	15
Gift Lake	13	0	4	0
Kikino	5	0	4	0
Paddle Prairie	31	7	24	0
Peavine	15	0	35	6
Other	0	0	1	0
	149	**18**	**194**	**41**
TOTAL:	**167**		**235**	

Active files **brought forward** for the 2009/2010 fiscal year:

Files Brought Forward April 1, 2009	**162**	
Complaints/Ombudsman's Own Initiative 2009/2010	**235**	
Total:		**397**
Resolution of Jurisdictional Complaints/ Ombudsman's Own Initiative:	148	
Resolution of Non-Jurisdictional Complaints	32	
Resolution of Requests for Information	32	
Total Complaints Resolved:		**212**
Total Active Files as at April 1, 2010		**185**

The total complaints **received** in 2009/2010 can be summarized as follows:

Complaints Received - April 1, 2009, to March 31, 2010

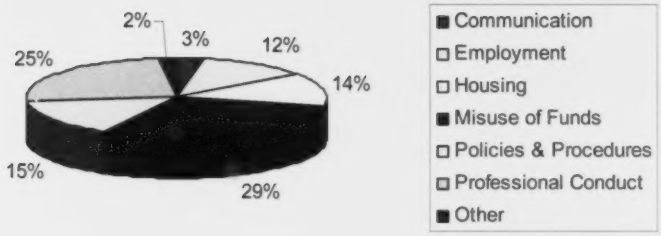
Jurisdictional Complaints/Ombudsman's Own Initiative	171
Non-Jurisdictional Complaints	29
Requests for Information *	35
TOTAL	**235**

** Councillors and staff are continuing to use this Office as a resource for information and advice **prior** to making decisions.*

Complaints are broken down into **jurisdictional** (those which the MSO has the authority to look into) and **non-jurisdictional** (those outside the MSO authority). Jurisdictional complaints fall within two categories: *Administrative Fairness* or *Conflict of Interest.*

Jurisdictional Complaints/Ombudsman's Own Initiative 2009/2010

	Complaints		Ombudsman's Own Initiative Areas of Concern	
Complaint Categories:	Administrative Fairness	Conflict of Interest	Administrative Fairness	Conflict of Interest
Communication	4	0	1	0
Employment	16	2	2	1
Housing	18	2	3	0
Misuse of Funds	35	2	12	0
Policies & Procedures	19	0	7	0
Professional Conduct	23	6	12	2
Other	3	0	1	0
Subtotal	**118**	**12**	**38**	**3**
TOTAL			**171**	



The MSO makes every attempt to bring about a positive conclusion (for both the complainant and for the party being complained about) through mediation and recommendations. **Jurisdictional** complaints were resolved as follows in 2009/2010:

Resolution of Jurisdictional Complaints/Ombudsman's Own Initiative
Files Closed 2009/2010

Disposition:	Administrative Fairness	Conflict of Interest
Oral complaint/no formal complaint submitted	31	10
Inquiry made/referral given/resolution facilitated	15	1
Complaint Withdrawn	1	0
Reviewed: Insufficient evidence to warrant inspection and/or investigation	9	5
Reviewed: Sufficient evidence identified and resolved through:		
-mediation/arbitration	5	1
-complaint withdrawn	3	0
-informal resolution successful	17	1
-recommendation made to Council; Council's response pending	1	0
Inspection/Investigation: insufficient evidence	2	1
Inspection/Investigation: recommendation made/resolved through:		
-mediation/arbitration	7	0
-complaint withdrawn	0	0
-recommendation accepted and implemented	16	0
-sent to the RCMP	0	0
Formal report to the Minister	22	
TOTAL:	**148**	

** Resistance and a lack of cooperation by some Settlement Councils and Administrations have made the review/investigation of complaints difficult to bring to conclusion.*

Case Summaries

Every effort is made to avoid taking issues to formal investigation. The goal of the MSO Office is to resolve issues through a cooperative review; however, if appropriate resolution cannot be achieved, a formal investigation may be authorized by the MSO.

The following case summaries provide a sampling of the types of complaints the MSO receives. *Every attempt has been made to protect the privacy of the individuals involved.*

MSO Investigation Absolves Councillor of Wrongdoing

Formal complaints were received from members of a Settlement alleging that a Councillor had purchased a piece of construction equipment from the Settlement and had not been required to pay for the equipment.

The Settlement was advised of the complaint. However, the Council had been dismissed and a Manager had been appointed by the Minister of Aboriginal Relations. The Métis Settlements Ombudsman authorized a formal Investigation into the allegations under the auspices of the Métis Settlements Act.

The investigation found that the individual who purchased the equipment was a Settlement member; however, at the time of the purchase was not an elected official or an employee of the Settlement.

The investigation revealed that the accounting program of the Settlement had changed and some of the records had not been transferred to the new program. The MSO brought in a Forensic Accountant to investigate this matter.

The investigator examined all of the documentation concerning the sale and determined that the purchase was legal.

Evidence was obtained that the buyer had entered into a repayment agreement with the Settlement, and had repaid the loan in full by making payments.

The intervention and subsequent investigation by the MSO resulted in this allegation being dealt with in a timely and satisfactory manner. The file was then closed.

Investments

Several complaints had been filed with the Métis Settlements Ombudsman alleging that some Settlement Councillors and Administrators were not exercising due diligence when investing Settlement monies on behalf of the membership.

It had been alleged that some councils had invested money into very risky investments. Allegations further stated that settlement funds had been invested into Canadian or foreign investments without the advice of a competent lawyer or a licensed financial advisor.

It was alleged that some councils have borrowed money against the margins of their investments. If there is a margin call, the settlement must immediately make those payments to the bank or financial institute involved, or their portfolio will be liquidated and the settlement will be liable for any shortfall in funds to cover the margin call. This is a very risky investment strategy.

In some cases the sales people offering shares for sale are very sophisticated and use various techniques to entice people to invest. Some of the techniques that were seen while conducting investigations were as follows; dinner presentations to introduce potential clients to the investments, offered reams of papers to read concerning the investments, took both clients and potential clients on all expense paid trips to promote the investments, and made available to investors free tickets to sporting events (with private suites and access to free food and beverages).

One particular case that was authorized for a formal investigation alleged that all the Métis Settlements were given an opportunity to invest in a particular project. It was learned that while most of the Settlements chose not to invest into this scheme, some Settlements did. The investigation revealed that the promoters were offering investment opportunities in an Alberta company. However, at the same time, there were at least four other foreign companies with a similar name that the promoter had interests in and was promoting. It was further alleged that shares from the Alberta Company were transferred at a later date to one of the foreign companies without the knowledge of the majority of the settlement members.

The investigation showed that one of the Settlements lost almost $500,000 (five hundred thousand dollars) of the Settlement's money. The stock is virtually worthless, and trading in the shares in Canada is prohibited. The promoters have since stopped endorsing the stock.

It had been alleged that this investment may be part of a potential stock manipulation. This matter is still under investigation.

Housing Issues on the Métis Settlements 1990-2010

The process of granting houses has generated many complaints. Some of the complaints alleged unfair screening processes, unfair allocation of homes, municipal corruption (promising members housing for votes), nepotism, conflict of interest, and elected officials receiving contracts to build the homes once they have been allocated.

In one case it was alleged that during an election two councillors promised members housing if they voted for them. Affidavits were taken and the R.C.M.P. investigated this matter. A settlement member launched a formal hearing into this matter in the Court of Queen's Bench.

Incomplete Housing

Settlements build homes year after year while homes on the same settlement have never been completed or even occupied. On one Settlement there are in excess of 30 homes (that have been built within the last five years) that are still unoccupied.

The concern is that settlement funds are being expended to build homes that are not being utilized. Many factors need to be

considered when addressing this issue, such as ownership of land, estate instructions, nature of the housing agreements (or lack thereof), rental agreements, the authority of the Council to reclaim allocated homes and the policies of the Métis Settlements General Council. This issue appears also to extend beyond one specific settlement; all eight settlements have this issue to some degree.

The MSO expressed his concerns in writing to the Minister of Aboriginal Relations and to the President of the Métis Settlements General Council. The MSO was informed by the MSGC President that this issue is presently being addressed as part of the Long Term Sustainability Plan between the MSGC and the Government of Alberta.

Breach of Housing Bylaw - Policy

In 2006, complaints were received alleging that one Settlement Council and Administration were not abiding by their own Bylaws and Polices regarding the repayment agreements and contracts of the Settlement. It was further alleged that this has been ongoing since 1990. As the Settlement Council and Administration would not cooperate with the MSO to provide the necessary documentation to review the allegations and the MSO did not have sufficient information to dismiss the complaints as frivolous; the MSO authorized a formal investigation to deal with these allegations in the spring of 2009.

The cost of housing built on that Settlement since 1990 amounted to approximately eighteen million dollars. The Policies and Bylaws showed that each member who received a new house was to pay 50% of the costs, which would have allowed the Settlement to recover approximately nine million dollars that could have been put towards more new housing.

The Investigation revealed that in many cases contracts and re-payment agreements for the houses were never signed. Members were given keys to residences prior to the houses being finished, and no one enforced the contracts or the re-payment agreements.

The paper work regarding the financial matters of the housing on the Settlement was in disarray. It was alleged that the contracts and repayment agreements have been badly managed by the Settlement. No one on the Settlement, other than one individual, has paid their 50% share required to own a house.

Council and Administration had an obligation to ensure that the housing portfolio was managed properly. Evidence demonstrates that they failed to exercise their fiduciary responsibility thus severely compromising the funding for future housing.

Administrative Unfairness- Housing Allocations

The Métis Settlements Ombudsman (MSO) received complaints from members alleging that the Settlement housing allocation program was not administered in a fair manner. It was also alleged that some Settlement Councillors placed themselves in a conflict of interest when members of their immediate family were awarded new housing.

Once the MSO appointed an independent Investigator to look into these allegations, the Settlement Council retained legal counsel (at the expense of the Settlement). Their legal counsel expressed concerns

about the MSO's Investigation and requested that the Minister of Aboriginal Relations appoint the Alberta Ombudsman to investigate some of the allegations raised and for the Métis Settlements Appeals Tribunal to conduct the investigation regarding the allegations of a conflict of interest.

The Settlements' legal counsel was informed by Alberta Justice that the Alberta Ombudsman would not have jurisdiction over the Métis Settlement because the Settlement is neither a provincial agency nor a department (as defined under the Financial Administration Act). Therefore their request was dismissed.

The request for the Métis Settlements Appeals Tribunal to investigate the allegation of a conflict of interest was also denied and the Settlement's legal counsel was informed that the Métis Settlement Appeals Tribunal is authorized to hear appeals and references pursuant to Section 189 of the Act but has no investigatory powers equivalent to the authority given to the MSO.

When the investigation was completed it was revealed that the Settlement Council did not adhere to several rules of Administrative Fairness. There was no information made available to the membership about how the Settlement Council would select housing recipients. There was no formal assessment of the housing applicants, no formal priority setting methodology was followed, and there was no independent review of the applicants. The Administration simply listed the applications and submitted them to the Settlement Council for their deliberations and decisions. No other conclusion can be reached except that Council decided who should receive a home without verifying eligibility or seeking administrative assistance.

The investigation also revealed that two Councillors were in a conflict of interest for their participation in the housing deliberations as two members of their immediate family were housing applicants (both of which ended up receiving new housing).

Section 39 of the Act requires councillors to disclose any financial interest they may have and prohibits councillors from participating in discussion and/or voting on matters where the individual councillor or members of their immediate family have an opportunity to gain financially.

Lastly, it was identified that one of the housing applicants chosen was not eligible in accordance with the Settlement Housing Policy. The Policy stipulates that an applicant must maintain residency (on their Settlement) for twelve months prior to the commencement of the application process. The Investigator discovered that this applicant was not residing on the Settlement and, as such, did not meet the requirements stipulated in the Housing Policy.

Several recommendations were proposed to this Settlement including changes to the Settlement Procedural Bylaw & Settlement Housing Policy, the revival of a Housing Selection Committee (or instead of the Housing Selection Committee, creating a Housing Advisory Committee), and that their Leave of Absence Bylaw be administered consistently.

In regards to the ineligible housing recipient, it was recommended that the Settlement Council rescind the housing unit allocated to the member.

The two Councillors indentified as being in a conflict of interest were asked to resign as stipulated in Section 26 of the Métis Settlements Act: Duty to resign if disqualified: "***26(1)*** *If a person is disqualified from remaining a councillor, the person must immediately resign.*"

The two Councillors were individually notified of the findings in relation to the Conflict of Interest. They were also provided an opportunity to respond to the MSO before the Settlement Council was notified of the Investigation findings. The two Councillors chose not to respond to the MSO.

The MSO informed the Settlement Council of the investigation results and recommendations, and a copy of the Investigation Report was provided to each Councillor, the Administrator and to the complainants (the Report was redacted to comply with the Freedom of Information and Protection of Privacy Act (FOIP)).

As the two councillors did not resign from Council, the MSO recommended that the Council take action pursuant to Section 26(2) of the Métis Settlement Act.

> ***(2)*** *If the person does not resign,*
>
> *(a) the settlement council may apply by originating notice to a judge of the Court of Queen's Bench for*
>
> *(i) an order determining whether or not the person is qualified to remain a councillor, or*
>
> *(ii) an order declaring the person to be disqualified from being a councillor*

The Council chose to take no action nor did the Council respond to the MSO as to the status of the proposed recommendations. As such, the MSO had no alternative but to make a formal Report to the Minister of Aboriginal Relations.

In addition to the Formal Report, it was recommended to the Minister of Aboriginal Relations that he exercise his authority pursuant to Section 176 of the Act, to remove the two Councillors from their position on Council and that he direct the Council to respond to the recommendations proposed by the MSO.

Following the recommendations made to the Minister from the MSO, the Settlement Council asked the MSO to retract his investigation findings and recommendations. The MSO saw no purpose in a retraction and therefore, declined the Settlement's request.

On December 16, 2009, the Minister of Aboriginal Relations issued Ministerial Order MSO-04/2009. The Order contained items for the Settlement's implementation; *some* of the items were recommended by the MSO office; some were not.

The Settlement Council had until April 1st, 2010 to implement the items as described in the Ministerial order.

The Minister subsequently appointed an Inspector to follow up on the Ministerial Order.

Housing Repairs and Maintenance

A Complainant whose home was troubled by mould infestation had alleged that their Settlement was not assisting them with these problems. The home was occupied by a husband and wife with seven children and received renovations three years prior.

However, these renovations were never fully completed.
Upon visiting the home, the MSO Advisor observed mould in almost every room in the house. It appeared that the mould was the result of a leaky roof which allowed water to saturate the attic insulation and spread down into the walls. The homeowner made no attempts to stop this leak and it eventually led to the mould penetrating the walls and ceilings, spreading into the living areas of the home and making the residents ill. While all of the residents have experienced headaches and respiratory problems, some have had to sleep in the basement as their bedroom was unfit due to the mould infestation.

The complainant indicated that this problem originated four years earlier just prior to their receiving housing renovations. The complainant alleges that the interior work was in fact not finished and that the roof had leaked ever since it was to have been completed.

As the complainant had not exhausted all avenues of appeal, it was suggested that they contact their Housing Coordinator, which they claimed to have done. They were advised to contact their Settlement Administrator and attempt to resolve the issue. The Complainant was further advised that if this did not resolve the matter, to take it directly to Council. If a meeting with Council did not resolve their concerns to contact the MSO Office again.

The complainant was also provided with information regarding mould as well as different avenues of receiving renovations for their home.

After this, the MSO Advisor learned that the Settlement had agreed to work with the complainant to rectify this problem.
It is the Policy of the MSO to ensure the complainants had exhausted all appeals at their local level (whenever possible) prior to accepting the complaint.

This matter had raised concerns of alleged poor workmanship when the home was renovated, an apparent failure of the Housing Coordinator or Administration Staff to ensure that the renovation work was completed in a proper manner, a lack of proper maintenance on the part of the homeowner, and especially a concern for the health and welfare of the residents of the home.

This Office continues to remind Settlements of the importance of verifying the work of contractors to ensure that they have completed the work that they were paid to do as well as withholding a portion of the payment until the work has been inspected and accepted. This is not only a good business practice, but will serve to motivate the contractor to properly finish the work.

It is equally important for the homeowner to realize that they have an obligation to maintain their home and if they are unable to do so, then should seek outside assistance before the home deteriorates to the point where it requires a major renovation. Once a health or safety issue is realized in the home it is important to resolve it immediately. Should the homeowner or occupants be unable to immediately deal with the problem, they should seek outside help to ensure that the home remains a safe living environment.

Help is quite often available from the Housing Department/Administration Office,

your Community Health Services Office or your Social Services Office.

Settlement Housing - Long Term Sustainability Plan

A Settlement member contacted the Office of the Métis Settlements Ombudsman concerned about the number of vacant homes on their settlement. The member documented (with photographs) nearly thirty homes that were vacant and forwarded them to this office. The homes were said to have either been abandoned or at least unoccupied for extended periods of time; which resulted in severe deterioration of the homes.

The concern was that Settlement funds were spent to build homes that sat idle. The complainant wondered what could be done to ensure settlement funded homes were occupied, given there was a shortage of housing on the settlement. It begged the question of "Is it not more cost effective to maintain, repair and then re-allocate existing homes rather than building new ones?"

Many factors needed to be considered to address the issue of deterioration of abandoned homes, such as ownership of land, estate instructions, nature of housing agreements, rental agreements, the authority of the Council to reclaim allocated homes, and policies or bylaws of the local settlement and the Métis Settlements General Council. This issue appeared to be beyond the single responsibility of the MSO office.

The MSO reviewed the Métis Settlements Act and approached other Métis Settlement entities to determine organizational responsibility for dealing with the issues raised by this settlement member. It was determined that the problem extended beyond one specific settlement to virtually all eight Métis Settlements. It was believed that the only existing organization with global authority over this issue is the Métis Settlements General Council (MSGC) or the Ministry of Aboriginal Relations.

The MSO expressed his concerns in writing to the Minister of Aboriginal Relations and to the President of the Métis Settlements General Council.

The MSO was informed by the MSGC President that this issue is presently being addressed as part of the Long Term Sustainability Plan, between MSGC and the Alberta Government.

The MSO chose not to investigate this matter further due to the aforementioned reasons.

MSO's Authority to Investigate Challenged

Between October and December 2007, multiple complaints were received from the same Settlement alleging that some of the current Councillors were in arrears on their repayment agreements with the Settlement. It was alleged that the Councillors were contravening Section 25(1) (m) of the Métis Settlement Act and within two months of receiving the initial complaint more complainants were received.

Initially, the Settlement Administration cooperated and agreed to provide the repayment agreements requested, however, it soon ceased to cooperate and refused to provide any documents. Due to the breakdown in cooperation, on January 15, 2008, the MSO moved the issue to "Formal

Investigation" and an outside investigator was appointed.

The Settlement Council then indicated that it would consult with their legal counsel prior to proceeding further. On February 21, 2008, the Settlement Council met with the Métis Settlements Ombudsman (MSO) and expressed it's displeasure with the appointed outside investigator. It further indicated it had difficulty in locating some of the requested repayment agreements.

On March 20, 2008, the MSO appointed a new outside investigator to continue with this investigation. This investigators request for the repayment agreements were denied by the Settlement Council. On April 14, 2008, through their lawyer, the Council advised the MSO that it would not be cooperating with regards to providing information pertaining to the debts owed by the Councillors to the Settlement. The lawyer also advised the MSO that the Council was challenging the jurisdiction of the MSO in court, and shortly thereafter, a Judicial Review was scheduled for October 8, 2008.

On January 16, 2009, the Honourable Judge Crighton, Court Of Queens Bench, Alberta handed down her decision in favour of the Office of the MSO, decreeing that the MSO had the jurisdiction to investigate.

On February 2, 2009, the Settlement Council notified all parties involved that it would appeal the decision of the Honourable Judge Crighton. The decision was then made to discontinue the investigation while the judgement was being appealed.

Late summer 2009, a separate Settlement Council believed that they had something to add to the appeal process and requested the MSO permit them Intervener status. The MSO determined that the reasons provided in their request for Intervener status were already being addressed in the hearing itself. The MSO also felt that if he had agreed to the request he would only be contributing to the delay of the appeal and the pending investigation, as well as wasting more money on legal fees, travel and other miscellaneous expenses on the part of all those involved.

This second Settlement Council then applied to the Courts for the Intervener Status, this hearing was held on November 5, 2009. The judge hearing the request did not agree with the case presented and denied the request.

On February 5, 2010, the Appeal was heard at the Appeals Court in Edmonton. The three sitting judges listened to the arguments of the two Settlement Lawyers, but were not convinced that the Honourable Judge Crighton had erred in her earlier judgement. Their findings were very clearly laid out in that the Métis Settlements Ombudsman does have the authority to investigate.

These legal challenges by the Council have cost the Office of the MSO approximately $50,000.00 in legal costs alone. Factoring in the tremendous amount of time spent working on this matter by the staff, as well as other costs, the total cost of the investigation was approximately $85,000.00. One can only speculate as to the legal costs incurred by the Settlement.

In conclusion, it is important to note that complaints received by the MSO are analyzed to ensure that they fall within the jurisdiction of the MSO. Sensitive or personal information that may be gathered through the investigation will be scrutinized

by way of the Freedom of Information and Protection of Privacy Act. It is also important to be aware of the length of time legal processes take. Although sometimes unavoidable, delays in legal processes may be experienced as a result of a number of legitimate reasons, as well as possible delay tactics.

Councillors Awarding Raises to Themselves

Settlement members complained to the Office of the Métis Settlements Ombudsman (MSO) that their Settlement Council had placed themselves in a conflict of interest. This conflict of interest pertained to the allegation of Settlement Councillors awarding themselves an increase in pay.

The MSO authorized a formal investigation into this allegation. Unfortunately, the settlement failed to cooperate and supply documents to the investigator and an examination had to be held with evidence being taken under Oath.

The investigation identified that the Council and administration staff had received a cost of living increase in October of 2007. Although the issue of a remuneration increase *was* discussed at council meetings, there was no formal resolution authorizing such an increase; therefore there was *not* a formal breach of Section 39 of the Métis Settlements Act. However, no Councillor was eligible for any remuneration adjustments without there first being: A) a Budget Bylaw Amendment (since the Policy stipulated that annual remuneration and benefits shall be identified in the yearly Budget Bylaw) and B) a revised and approved Council Remuneration Policy reflecting the remuneration increase. The evidence indicated that these steps were not taken although they are mandated in the Remuneration Policy.

It was the recommendation of the MSO that the Settlement recalculate the remuneration payments of all affected Councillors (past and present who received the increase) and to have them repay the monies calculated to correct this administrative error. This recommendation was necessary since the Councillors were not eligible for any remuneration increase until certain policy provisions were met.

The MSO also included in the recommendation that in the event that there were individuals who were unable to immediately repay the funds then those individuals must immediately enter into a Repayment Agreement.

A redacted version of the investigation report was provided to the Settlement Council, Administrator, and to the complainants. As well, the MSO decided to provide copies of the reports to members who requested a copy. [NB: *The MSO has the ability and authority to release or make a report to any person considered necessary or appropriate.]*

A request was made from Settlement members to the Settlement Council that a public meeting be held. The purpose of the meeting would be to discuss the findings of this particular investigation plus two other investigations that had taken place on their Settlement. The Council granted the meeting request and the MSO attended the meeting since he had received a formal invitation to do so.

During this meeting the members of the Settlement asked questions of the Council and Administrator (all were in attendance)

about the three different Investigation Reports. Members of Council informed the attendees that Council had passed a resolution to accept and implement the MSO's recommendations.

The MSO was pleased with the willingness of this particular Settlement to rectify the oversights identified in the Investigation Report. The involvement of the Settlement membership was also refreshing.

This MSO file remains open until the MSO is satisfied that his recommendations have been implemented.

APPENDICES

Appendix A

Ministerial Order

Excerpt from Ministerial Order MSO-03/2009
Appointment of the Métis Settlements Ombudsman

I, Gene Zwozdesky, Minister of Aboriginal Relations, pursuant to s.175.1(1)(a) of the *Métis Settlements Act* and s.4(2) of the *Métis Settlements Ombudsman Regulation*, hereby appoint John Brosseau as Métis Settlements Ombudsman.

This order comes into force on June 5, 2009 and rescinds Ministerial Order #18/2007.

Appendix B

Budget Variance Report

Office of the Métis Settlements Ombudsman
as of March 31, 2010

	Budget Allocation	Expenditure	Variance
*Staff	$ 429,000.00	$ 431,375.00	$ (2,375.00)
Accounting	$ 26,570.00	$ 11,364.00	$ 15,206.00
Communications	$ 13,350.00	$ 6,356.00	$ 6,994.00
Equipment Rentals/Lease	$ 1,760.00	$ 2,143.00	$ (383.00)
External Contractors	$ 500.00	$ -	$ 500.00
Insurance	$ 7,270.00	$ 5,520.00	$ 1,750.00
Interest/Bank Charges	$ -	$ 219.00	$ (219.00)
Legal	$ 15,000.00	$ 16,735.00	$ (1,735.00)
Maintenance/Repairs	$ 400.00	$ -	$ 400.00
Office Supplies	$ 6,500.00	$ 3,231.00	$ 3,269.00
Outreach	$ 4,500.00	$ 2,460.00	$ 2,040.00
Postage/Courier	$ 100.00	$ 291.00	$ (191.00)
Telephones/Internet	$ 8,500.00	$ 7,668.00	$ 832.00
Training & Development	$ 6,590.00	$ 8,026.00	$ (1,436.00)
Travel	$ 12,000.00	$ 9,285.00	$ 2,715.00
Vehicle Lease	$ 10,000.00	$ 8,540.00	$ 1,460.00
Vehicle Maintenance & Repair	$ 2,000.00	$ 1,790.00	$ 210.00
Vehicle Parking/Building	$ 960.00	$ 1,845.00	$ (885.00)
**Special Investigations	$ 100,000.00	$ 243,257.00	$ (143,257.00)
TOTAL	**$ 645,000.00**	**$ 760,105.00**	**$ (115,105.00)**

Notes:

*Special Investigations occur when outside investigators are appointed by the MSO under the *Métis Settlements Act* to perform independent investigations.

Appendix C

Administrative Fairness Checklist

Introduction

An important step along the road to self governance and self regulation of Alberta's eight Métis Settlements is the confidence that everyone is treated fairly and with respect, especially when dealing with Councillors, decision makers and persons in positions of authority.

Checklist

This Administrative Fairness Checklist is prepared to guide Council, Settlement employees, Settlement entities, decision makers and Settlement members in their daily business with each other. Answering the following questionnaire honestly will help you decide whether business on your Settlement is being conducted as fairly as possible. This Checklist is a living document that will change from time to time as the need arises.

Fairness:

- ✓ Is all Settlement business conducted in a fair and transparent manner?

Understanding the Process:

- ✓ Do Councillors, Settlement employees, and decision makers ensure that everyone understands their roles and responsibilities?

Impartiality:

- ✓ Do Councillors, Settlement employees, and decision makers make decisions based on what is in the best interest of the Settlement as a whole, eliminating self-interest?

Professional Conduct:

- ✓ Do Councillors, Settlement employees, and decision makers treat everyone with dignity and respect?
- ✓ Do members treat Councillors, Settlement employees, and decision makers with dignity and respect?
- ✓ Is unprofessional or inappropriate (unethical, unprincipled, immoral, or dishonourable) conduct allowed to occur?
- ✓ Do Councillors, Settlement employees, and decision makers utter public remarks that are inappropriate?
- ✓ Do Councillors or decision makers threaten or bully employees or Settlement members?
- ✓ Is the use of profane language tolerated?
- ✓ Are policies in place to make offenders of unprofessional or inappropriate conduct accountable for their actions?
- ✓ Do Councillors, Settlement employees, and decision makers misuse or abuse their positions?

The Right to Voice a Concern:

- ✓ Are you aware that everyone has the right to voice a concern without fear of punishment or negative consequence?
- ✓ Are you also aware that punishing or allowing negative consequences to occur to someone that has voiced a concern is a serious breach of administrative fairness and/or the Canadian Charter of Rights and Freedoms?

Public Information:

- ✓ Is public information available in a format that is understandable and written in plain language?

Clarification:

- ✓ Are adequate explanations given to, or information provided to, members asking for details about Settlement activities, personal entitlements, eligibility criteria, etc.?
- ✓ Are efforts made to refer members to the appropriate agencies?

Forms:

- ✓ Are all forms that require completion easy to read and written in plain language?

Freedom of Information and Protection of Privacy (FOIP):

- ✓ Are FOIP forms available upon a member's request?
- ✓ Is the privacy of individuals adequately protected?

Letters and Correspondence:

- ✓ Are members' concerns being responded to in a timely fashion in the form of a letter that can clearly be understood?

Facilities:

- ✓ Are work places on the Settlement a safe and healthy environment for staff?
- ✓ Are Settlement-owned buildings and offices designed to respect and protect the privacy of Settlement members, outside agencies, staff, and confidential information?

Timeliness:

- ✓ Are decisions made and actions taken within a reasonable time period?
- ✓ Are adequate reasons for decisions and actions communicated to or provided to the affected parties in a meaningful and timely way?

Complaint Procedures:

- ✓ Are complaint procedures well known, clearly defined, and understandable?
- ✓ Are community suggestions for improving complaint procedures acted upon?
- ✓ Are complaints given careful consideration and responded to in a timely fashion?

Appeal Review and Complaint Procedure:

- ✓ Are affected individuals informed about ways to appeal or to request a review regarding decisions made or actions taken?
- ✓ Is this information provided in a polite, respectful way?
- ✓ Are Settlement members aware of these rights through posters and/or brochures?

Roles and Responsibilities:

- ✓ Do all Settlement positions have clearly defined job descriptions?
- ✓ Do the job titles accurately describe the work done?
- ✓ Can jobs be combined or re-organized to achieve a higher quality or better delivery of services?

Coordination:

- ✓ Could service quality and fairness to Settlement members be improved through adjustments in policies and procedures?
- ✓ Could relationships with other partners, outside communities, and government agencies be made better through adjustments to policies and procedures?
- ✓ What procedures or checks and balances are in place to ensure that work is being done in the way it was originally intended?
- ✓ Is there an attitude in the work place that promotes growth, change, and ongoing improvement?

Consultation with Settlement Members:

- ✓ Are systems in place that accurately record and organize statistical information so that changes in programs or policies can be evaluated and adjusted if necessary?

- ✓ Are Settlement members invited to take part in the planning of, or changes to, the way the Settlement operates?

Housing:

- ✓ Is the distribution/allocation of Settlement housing fair?
- ✓ Do all eligible Settlement members have equal opportunity to receive Settlement housing?
- ✓ Is there clearly defined selection criteria established to receive housing?
- ✓ Are the selection criteria available to the applicants?
- ✓ Are unsuccessful applicants being notified in writing as to why they were not selected?

Jobs:

- ✓ Are members given an equal opportunity to compete for Settlement jobs?
- ✓ Are contracts and work distributed fairly amongst Settlement members?
- ✓ Are Settlement policies being followed in the hiring process?

Revised: February 2008

Conflict of Interest Checklist

Introduction

All members of a Métis Settlement Community are entitled to a governance structure that operates with fairness, integrity and impartiality of decision-making. Public trust is damaged when the private interests of an elected official or an employee takes, or appears to take, priority over the public interest, thus leading to a *conflict of interest* or a perceived *conflict of interest.*

Checklist

This Conflict of Interest Checklist is prepared to guide Councils, Settlement employees, decision makers, and Settlement members in their daily business with each other. Answering the following questionnaire honestly will help you decide whether business on your Settlement is being conducted in an appropriate manner. This Checklist is a living document that will change from time to time as the need arises.

Definitions:

Conflict of Interest: arises when decision makers (Councillors, Settlement employees, Settlement entity employees) are involved in a decision or action during the course of their public duties, knowing that there is, or may be, an opportunity to further his/her personal or financial interests or those of an immediate family member.

Perceived Conflict of Interest: arises when a reasonable person could believe that the decision-maker's judgment is likely to be affected by a private interest.

Potential Conflict of Interest: is something that may develop into an actual *conflict of interest.*

Immediate Family: means spouse, father, mother, brother, sister, and children.

Conflict of Interest Policy:

- ✓ Is there Settlement policy and/or guidelines regarding *conflict of interest* and, if so, is it followed?
- ✓ Are these policy/guidelines consistent with the *Métis Settlements Act* and/or policies developed by the Métis Settlements General Council?
- ✓ Does Council or Administration ensure that all Settlement managers, employees, and decision makers are made aware of the *conflict of interest* policy and guidelines?
- ✓ What actions are required by public office holders?
  a) In all cases, the Settlement member who holds a public office is responsible to take immediate action if he/she suspects that an actual, perceived or potential *conflict of interest* is possible, whether financial or otherwise.
  b) Section 39 of the *Métis Settlements Act* requires a Councillor to disclose any real or apparent financial *conflict of interest* to the Council. If the matter before Council is to be decided by a resolution, the Councillor must withdraw from further discussion, voting, or involvement.
  c) A Settlement employee is required to immediately disclose a possible *conflict of interest* to his/her supervisor if the employee is in a conflict. The employee must withdraw from any further involvement or action on the matter.

Examples of Conflict of Interest:

While it is not possible to predict all *conflict of interest* situations, you can use the following headings and questions to help identify where most *conflict of interest* situations could occur.

Furthering Private Interests:

- ✓ Does an immediate family member stand to gain or lose financially from the individual's or the organization's decision or action in a matter?
- ✓ Is a Councillor, Settlement employee, or decision maker using his/her position to influence a decision, knowing it might benefit an immediate family member?
- ✓ Is a Councillor, Settlement employee, or decision maker using or communicating privileged or confidential information, knowing it might benefit an immediate family member?
- ✓ Does a Councillor, Settlement employee, or decision maker use his/her position to influence a decision or an action, knowing that it may benefit, or appear to benefit, an immediate family member?

Nepotism:

- ✓ Is a Councillor, Settlement employee, or decision maker involved in making a decision to grant a home or renovation to an immediate family member?
- ✓ Is a Councillor, Settlement employee, or decision maker involved in interviews or hiring decisions where applicants include immediate family members?

Acceptance of Gifts, Gratuities or Other Benefits:

- ✓ Does a Councillor, Settlement employee, or decision maker accept favours, gifts, services or hospitality from those who stand to gain or lose from that individual's or the organization's decision or action?

  Note: This does not prevent acceptance of small gifts of little value or of a cultural nature or from publicly being recognized for good work.

Outside Employment:

- ✓ Do immediate family members of Councillors or Settlement employees gain or appear to gain an unfair advantage over other Settlement members in obtaining contracts or other outside employment due to their access to privileged information?
- ✓ Does a Councillor, Settlement employee, or decision maker conduct private business during working hours to the extent that it interferes with his/her public duty?
- ✓ Does a Councillor, Settlement employee, or decision maker use public premises, equipment or supplies for private use without appropriate authorization?
- ✓ Does a Councillor, Settlement employee, or decision maker use their public role to advance their own private interests in any way?

Public Statements:

- ✓ Does a Councillor, Settlement employee, or decision maker disclose private or confidential information to those who are not authorized to receive it?

  Note: These actions may also be governed by Freedom of Information and Protection of Privacy (FOIP).

Volunteer Activities:

- ✓ Do volunteer activities take up time during working hours?

  Note: Individuals are encouraged to participate in volunteer activities unless this causes an actual or perceived conflict of interest.

General Questions to Consider

- ✓ Are the decisions you make as a Councillor, Settlement employee, or decision maker in the best interests of the Settlement as a whole or are they self-serving?
- ✓ Have you made decisions or taken an action that you are not proud of?

Revised: February 2008

MSO
Information bulletin

Conflict of Interest

Over the last several years the Metis Settlements Ombudsman has dealt with a number of complaints from Settlement members alleging that a member of the Settlement Council was acting in a way that placed the councilor in a conflict of interest.

Generally a conflict of interest exists when a person in a decision making position (councilor or a administrator) makes a decision or influences a decision in which they, or a member of their family, has a private interest and stand to financially gain by the decision being made. An example of this would be when a councilor voted to award a contract to a company owned by his wife.

All elected officials must be very careful not to place themselves in a conflict of interest as at a minimum it invites criticism from their electorate, and in serious cases removal from office. Metis Settlements are especially vulnerable to allegations of conflict of interest because the communities are small and councilors are related to a significant number of the Settlement residents.

The safest way to handle a potential conflict of interest is for the councilor to not participate in, influence, or vote on the decision being made. Alternatively, they can declare the nature of the potential conflict to Council and have the Council determine if there is a conflict of interest. However, once the council has made a decision the councilor is bound by the decision.

The forgoing is an overview of conflict of interest. However, in the case of Metis Settlements there are legislative exceptions to the above found in the Metis Settlements Act and in particular Sections 16 and 39.1. Section 16 of the Metis Settlements Act requires that members who run for Council must file a disclosure statement describing the general nature of each agreement which they have with the Settlement. Section 39.1 of the Act provides that under certain specific circumstances a councilor may have a financial interest in a matter and may not be in a conflict of interest. However, caution is advised and a careful review of section 39.1 is recommended prior to any action being taken by a councilor. Similarly, they should review the financial interest policy of General Council.

Issue #2/10/2009

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MSO
Information bulletin

Councillor & Contractor

Since the MSO office was created there have been allegations raised regarding a conflict of interest based on the sole fact that a serving councillor is also contractor. An allegation of this nature inevitably raises the two following questions:

Question #1
Can a settlement councillor provide contract services to the settlement under the Metis Settlements Act?

1. The simple answer to question #1 is-Yes

The Metis Settlements Act contains provisions which govern the behaviour of council's with respect to contracts between councillors and their settlement. However, the Act does not prohibit a councillor from entering into a contract with a Settlement, provided those contracts meet the requirements of section 39.1 of the MSA.

As well, the councillor must disclose a financial interest in such a contract that he or she may become party too when it is being considered by the settlement council. Following the disclosure of a financial interest, the MSA requires the councillor to remove themselves from deliberations surrounding the matter and the councillor cannot vote on the contract. (*This is same for when an immediate family member of a councillor may become party to a contract that is being considered by the settlement council.)

Question #2
Is the Councillor in a conflict of interest?
The answer to Question #2- It depends on a number of factors and there is no simple answer to this question.

2. A Councillor is not automatically in a conflict of interest for the sole reason of being both a councillor and a contractor. To be deemed in a conflict of interest, there would need to be evidence of a breach of the Act, any local settlement policies and/or bylaws adopted by that settlement or General Council Policies and in particular General Council Financial Interest Policy.

*A competitive employment process must also be done to ensure a fair an equitable process.

Issue #3/1/2010

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MSO
Information bulletin

The fine line between governance & administration

It is my view that significant improvements can be made, to the operation and governance of the Metis Settlements, if Council and Administration understand their respective roles in the settlement structure. (See sections 32 to 47 of the Metis Settlements Act)

Role of Council-Governance

The role of council is to govern the affairs of the Settlement by way of by-laws, policies, and council resolutions; all of which are created and decided by the Council. Council then retains an Administrator to carry out the implementation of their policies, bylaws and resolutions. It is NOT the role or authority of any *individual* Councillor to direct the activities of the Administrator or of any Settlement staff member.

Role of the Administration-Carry out Governance

The role of the Administrator is to manage the affairs of the Settlement by implementation of settlement bylaws, policies, and duly passed Council resolutions. Administration staff assist the Administrator in carrying out the operational functions and ultimately report to the Administrator; not individual Councillors.

Council Meeting Minutes

Decisions of Council can only be made in a public forum such as a Council meeting. Decision of Council *must* be recorded in the minutes identifying the "mover", "seconder", and the status of the resolution (carried, defeated).

Council has the authority to hold "in-camera" sessions. These "sessions" are primarily used to discuss confidential matters ranging from personnel issues to legal issues. Should Council wish to go in-camera, a resolution must be passed to go in-camera and a motion when Council returns to the meeting. If Council agrees to a course of action while in-camera it must pass a motion at a public meeting for it to have effect.

It is crucial that meeting minutes are recorded in a competent manner . After all, meeting minutes form the organizational memory. Resolutions of Council need to be accurately reflected in the minutes as they become a public record. As always, Council meetings are open to the public.

A Council resolution takes effect the moment the resolution passes. Approval of meeting minutes is not to be unreasonably delayed and should be approved at the beginning of the next Council meeting. Meeting minutes are then to be posted for the memberships viewing for fourteen days.

Issue #4/02/2010

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MSO
Information bulletin

Housing – Appeal Process

The issue of housing allocations is a difficult one for decision makers to deal with in a way that is seen as fair and unbiased. Different approaches have been utilized, however, decision makers are still faced with allegations of conflict of interest or bias in their decisions related to housing. This information is being shared with you as it may be of value in helping you with issues relating to housing.

Over the last few years the Métis Settlements Ombudsman ("MSO") has received complaints from Settlement members regarding fairness of how new housing allocations are made. Primarily, members purport the housing allocation process is biased, unfair and driven by personal interests. In an attempt to keep at arm's length some Settlement Councils have appointed a local Housing Committee and in some instances delegate their decision making powers to this Committee. The MSO Office sees this as a positive step that has been advocated in the past by this office. One Council, in order to avoid issues of political influence, has appointed non settlement members who have experience in the housing field to their Housing Committee.

The role of a Housing Committee is to primarily screen applications and decide which applicants shall receive new housing. While the process leading to the appointment of this Committee appears to be a non-issue, there have been concerns raised about how one may appeal the decision of a Housing Committee. To keep the Committee independent of the Settlement Council, some Councillors wish to remain uninvolved and independent even in the appeal process. While this "hands off approach" by Council guarantees independence of the Housing Committee, there is still an onus on the Council to create an appropriate appeal process for individuals who believe they have been unfairly treated in the selection process.

An appeal is a process requesting, by aggrieved persons, a formal change to an official decision. Grounds for an appeal typically include an error of law, fact, or a procedure. To delegate the appeal of a Housing Committee decision to the Housing Committee is not appropriate as one cannot make an appeal to whomever made a decision in the first place; it must be made to a new entity. At this time there appears to be two alternatives available for an appeal from a Housing Committee decision that would stand the test of administrative fairness. Firstly, if it is an issue of administrative error or unfairness it could be appealed to the MSO. Alternatively it could be heard by the Settlement Council. However, the appeal must be based on a breach of policy or procedure by a Housing Committee, not simply because the affected party disagrees with the decision that was made by the Committee.

Implications for Settlement Councils:

1. To avoid being accused of enabling or participating in an unfair selection processes the Settlement Council may choose to establish a Housing Selection Committee that is independent of Council.
2. This committee should be given clear and concise criteria by council upon which housing recipients are to be selected.
3. Any appeal of a decision by the Housing Selection Committee should be made to another unbiased body.

The MSO will *only* get involved subsequent to a member exhausting their local appeal process and only to review complaints on an Administrative Unfairness level, as opposed to complaints of a political nature.

Issue #1/07/2009

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